

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 LOUISETTE GEISS, et al.,

4 Plaintiffs,

5 v.

17 CV 9554 (AKH)

6 THE WEINSTEIN COMPANY HOLDINGS  
7 LLC, et al.,

8 Defendants.

Oral Argument

9  
10 New York, N.Y.  
11 March 13, 2019  
12 11:00 a.m.

13 Before:

14 HON. ALVIN K. HELLERSTEIN

15 District Judge

16  
17 APPEARANCES

18 HAGENS BERMAN SOBOL SHAPIRO LLP

19 Attorneys for Plaintiffs

20 BY: ELIZABETH A. FEGAN

21 SEYFARTH SHAW LLP

22 Attorneys for Defendant Weinstein Company

23 BY: KAREN BITAR

24 LATHAM & WATKINS LLP

25 Attorneys for Defendants Miramax and Sarnoff

BY: MARVIN S. PUTNAM

## 1 APPEARANCES (Continued)

2 LEWIS BRISBOIS

Attorneys for Defendant Harvey Weinstein

3 BY: ELIOR SHILOH

4 SCHULTE ROTH &amp; ZABEL LLP

Attorneys for Defendant Robert Weinstein

5 BY: BRIAN T. KOHN

6 PATTERSON BELKNAP WEBB &amp; TYLER LLP

Attorneys for Defendants Lasry, Jones, and Dolan

7 BY: JAMES V. MASELLA, III

8 FRIED, FRANK, HARRIS, SHRIVER &amp; JACOBSON LLP

Attorneys for Defendants Maerov and Sackman

9 BY: ISRAEL DAVID

10 REED SMITH LLP

Attorneys for Defendant Koenigsberg

11 BY: JOHN C. SCALZO

12 SKADDEN ARPS SLATE MEAGHER &amp; FLOM LLP

Attorneys for Defendants Ziff and Dolan

13 BY: ABIGAIL E. DAVIS

LAWRENCE S. SPIEGEL

14 PAUL WEISS RIFKIND WHARTON &amp; GARRISON LLP

Attorneys for Defendant Lasry

15 BY: DANIEL STONE

16 PILLSBURY WINTHROP SHAW PITTMAN LLP

Attorneys for Defendant Ammar

17 BY: MATTHEW D. STOCKWELL

18 SERPE + RYAN

Attorneys for Defendant Mark Gill

19 BY: SILVIA L. SERPE

20 HOGUET NEWMAN REGAL &amp; KENNEY

Attorneys for Defendant Ashbrooke

21 BY: HELENE R. HJECHTKOPF

22 SCHLAM STONE &amp; DONAL LLP

Attorneys for Defendant Glasser

23 BY: RICHARD H. DOLAN

24 ROSOFF SCHIFFRES &amp; BARTA

Attorneys for Defendant Schneeweiss

25

1 (Case called)

2 THE DEPUTY CLERK: Counsel, please state your  
3 appearances for the record.

4 MS. FEGAN: Good morning, your Honor. Elizabeth Fegan  
5 for plaintiffs.

6 MR. SHILOH: Elinor Shiloh on behalf of Harvey  
7 Weinstein from the law firm of Lewis Brisbois.

8 THE COURT: And you represent?

9 MR. SHILOH: Harvey Weinstein.

10 THE COURT: Let me do this in a different way.

11 Who represents Robert Weinstein?

12 MR. KOHN: Good morning, your Honor. Brian Kohn from  
13 Schulte, Roth & Zabel.

14 THE COURT: Who represents David Glasser?

15 MR. DOLAN: Good morning, your Honor. Richard Dolan,  
16 Schlam Stone & Dolan.

17 THE COURT: How are you, Mr. Dolan?

18 MR. DOLAN: Good, Judge.

19 THE COURT: Barbara Schneeweiss.

20 MR. BARTA: Good morning, your Honor. Robert Barta.

21 THE COURT: Did I force you to come?

22 MR. BARTA: You did not force me to come, your Honor.  
23 I love coming to New York.

24 THE COURT: What about your wife's 60th?

25 MR. BARTA: We managed it. Thank you, your Honor. We

1 made it here about ten minutes ago. So all is good. Thank  
2 you.

3 THE COURT: Richard Koenigsberg.

4 MR. SCALZO: Good morning, your Honor. John Scalzo of  
5 Reed Smith.

6 THE COURT: No Jonathan Gordon?

7 MR. SCALZO: John Scalzo of Reed Smith.

8 THE COURT: Walt Disney?

9 MR. EARNHARDT: Good morning, your Honor. Wes  
10 Earnhardt Hart from Cravath, Swaine for Walt Disney.

11 THE COURT: Mark Glasser.

12 MR. STONE: Good morning, your Honor. Daniel Stone  
13 from Paul, Weiss, Rifkind, Wharton & Garrison.

14 THE COURT: Nancy Ashbrooke.

15 MS. HECHTKOPF: Good morning, your Honor. Helene  
16 Hechtkopf, Hoguet Newman Regal & Kenney.

17 THE COURT: Miramax and Tim Sarnoff.

18 MR. PUTNAM: Marvin Putnam, your Honor, of Latham &  
19 Watkins.

20 THE COURT: Thank you.

21 Mark Gill.

22 MS. SERPE: Silvia Serpe from Serpe + Ryan, LLP.

23 THE COURT: Why aren't you at the table?

24 MS. SERPE: I will gladly come to the table,  
25 your Honor.

1 THE COURT: There's a seat there.

2 MS. SERPE: Sure.

3 THE COURT: Paul Tudor Jones.

4 MR. MASELLA: Good morning, your Honor. James Masella  
5 from Patterson Belknap Webb & Tyler.

6 MR. CRUZ: Good morning, your Honor. Alejandro Cruz  
7 from Patterson Belknap Webb & Tyler.

8 THE COURT: Who will be arguing between the two of  
9 you?

10 MR. MASELLA: I will be, your Honor. James Masella.  
11 My apologies.

12 THE COURT: Lance Maerov and Jeff Sackman.

13 MR. DAVID: Good morning, your Honor. Israel David  
14 with Fried, Frank.

15 THE COURT: Dirk Ziff.

16 MR. SPIEGEL: Good morning your Honor. Lawrence  
17 Spiegel with Skadden, Arps.

18 MS. DAVIS: And Abigail Davis, also with Skadden,  
19 Arps.

20 THE COURT: You can go to the jury box.

21 The Weinstein Company.

22 MS. BITAR: Good morning, your Honor. Karen Bitar,  
23 Seyfarth Shaw.

24 THE COURT: Did I miss anyone?

25 MR. ROSENBERG: The party I'd just assume not be

1 invited to, your Honor. John Rosenberg for James Dolan.

2 THE COURT: You can go to the jury box too if you  
3 want, Mr. Dolan.

4 MR. STOCKWELL: Your Honor, Matthew Stockwell from  
5 Pillsbury Winthrop for Mr. Ben Ammar.

6 THE COURT: Did you sign in?

7 MR. STOCKWELL: I did, your Honor.

8 THE COURT: Who's your client?

9 MR. STOCKWELL: Mr. Ben Ammar.

10 THE COURT: Did you say Ben Ammar?

11 MR. ROSENBERG: Yes, your Honor.

12 THE COURT: What's your name?

13 MR. STOCKWELL: Matthew Stockwell.

14 THE COURT: You can go in the jury box if you like.

15 Have I missed anyone?

16 Okay. I'd like to discuss the Trafficking Victims  
17 Protection Act first. I'll deal with the motion by Harvey  
18 Weinstein first.

19 You can turn that podium around.

20 MR. SHILOH: Yes, your Honor. Good morning,  
21 your Honor.

22 In addressing the Sex Trafficking Act alleged by the  
23 plaintiffs, the critical element of a commercial sex act is not  
24 alleged. Assault is alleged. Battery is alleged. However, a  
25 commercial sex act is not.

1           There is no exchange of value. Now, I've read  
2 Judge Sweet's opinion with respect to how he translates what is  
3 exactly commercial value. And on page 8 of his decision, he  
4 attributes value to the fact that just meeting Harvey Weinstein  
5 is value in and of itself because it would essentially possibly  
6 propel this person's career or ability to obtain a contract,  
7 and that is the value.

8           However, respectfully, there is a danger in applying  
9 the definition to commercial value that is applied by  
10 His Honor, Judge Sweet. The best example that I can provide  
11 your Honor with is this, if I'm a third-year law student and I  
12 attend a networking event that my law school is hosting and at  
13 that networking event I meet the managing partner of the most  
14 prestigious New York City law firm and, after speaking with  
15 this partner, he invites me back to his office to essentially  
16 discuss further possible employment and advancement in my  
17 career, and unbeknownst to me, this partner has other  
18 intentions. I make my way to this partner's office that  
19 evening after the event, and a sexual act takes place.

20           THE COURT: How has he enticed you?

21           MR. SHILOH: He has enticed me with the promise of  
22 possible employment.

23           Now, that is an assault, plain and simple. However,  
24 according to Judge Sweet's definition --

25           THE COURT: I'm looking at (a)(1).

1 MR. SHILOH: (a)(1) in the complaint, your Honor?

2 THE COURT: No. Title 18, 1591(a)(1): "Whoever  
3 knowingly in or affecting commerce recruits, entices, harbors,  
4 transports, provides, obtains, advertises, maintains,  
5 patronizes, or solicits by any means a person or" -- and then  
6 it goes on to two: "Knowing that means of force or threats of  
7 force or fraud or coercion will be used to cause the person to  
8 engage in a commercial sex act."

9 Isn't that sufficient?

10 MR. SHILOH: No, it's not, your Honor. They have not  
11 alleged any commercial value being exchanged.

12 THE COURT: There's nothing in commercial value. They  
13 say commercial sex act, but 1591(a)(1) does not speak of  
14 benefits.

15 MR. SHILOH: Respectfully, your Honor, the commercial  
16 sex act is defined by Section 1591(e)(3) as "any sex act on  
17 account of which anything of value is given to or received by  
18 any person."

19 THE COURT: Anything of value is these people are  
20 coming up because they want jobs. They want favor. They're in  
21 the business, and they want Harvey Weinstein's endorsement for  
22 hiring or something else of value.

23 MR. SHILOH: I don't disagree with what you're telling  
24 me, your Honor. However, that's an assault. It's not  
25 sex-trafficking under the statute and the legislative history



1 surrounding the purpose of sex trafficking.

2 THE COURT: Sex trafficking can include assaults, but  
3 this is an allegation that Mr. Weinstein enticed a woman to  
4 come to his hotel room, and instead of discussing a project or  
5 a job or something of like nature, forced her to engage in a  
6 sex act.

7 MR. SHILOH: Well, your Honor, there is no value being  
8 exchanged. I understand what you're telling me, but a  
9 necessary component is value. The only value being attributed  
10 is the definition provided by His Honor, Judge Sweet.

11 And he's simply incorrect because, frankly, we're then  
12 placing a higher standard on anybody who is rich, famous,  
13 important. And if they were to commit similar allegations,  
14 according to Judge Sweet, it's sex trafficking.

15 I argue that it's simply assault and not sex  
16 trafficking under the statute.

17 THE COURT: Ms. Fegan. You can stay where you are.

18 MS. FEGAN: Yes, your Honor. Quite simply, we have  
19 three plaintiffs that have brought claims under the Sex  
20 Trafficking Act. Each of them were enticed by Mr. Weinstein to  
21 come meet with him specifically for the job or for the contract  
22 he was offering.

23 Melissa Thompson met with him --

24 THE COURT: Answer the point that's made that there  
25 needs to be something of value.

1 MS. FEGAN: There was something of value.  
2 Ms. Thompson's company signed a contract with him as a result  
3 of that meeting.

4 THE COURT: Isn't that value?

5 MS. FEGAN: That's absolutely value, and it's  
6 commercial value, your Honor. Ms. Geiss was promised a  
7 three-picture deal, and Ms. Thomas met with him because she was  
8 specifically interviewing to be his nanny. None of those did  
9 they meet him at a party or follow him to his room. Each of  
10 those they were specifically asked to meet with him for a  
11 contract, a job, or a deal.

12 THE COURT: Mr. Shiloh, that's not value?

13 MR. SHILOH: It is not, your Honor. Let me expound.

14 THE COURT: So those are not value?

15 MR. SHILOH: Your Honor, they still have not alleged  
16 that. It's not alleged in the complaint. There is no  
17 commercial exchange of value set forth.

18 The example given with respect to the nanny, the nanny  
19 went to Mr. Weinstein's home. He opens the door. He's in a  
20 T-shirt and boxers. She meets with him. There are kids  
21 walking around. He tells the kids to go to the other room. He  
22 interviews her. And according to her, he hugs her very  
23 forcefully according to the allegations.

24 Is that sex trafficking? I don't think so,  
25 your Honor.

1 THE COURT: There are a number of different incidents.  
2 I don't think it's necessary at this point to isolate them.  
3 I'll take the issue under advisement, but I believe that there  
4 is an exchange of value. It's not money. It's not a typical  
5 prostitution deal, but it does seem to fit the statute.

6 MR. SHILOH: Respectfully, your Honor, if I may just  
7 add a few more points.

8 There are three incidents that are alleged, three  
9 plaintiffs, not all the plaintiffs. And it's critical that  
10 this Court review the allegations relating to all three because  
11 by labeling this conduct as "sex trafficking," we're opening  
12 the door that any time anybody who is rich or famous has a  
13 meeting with somebody and a sexual act takes place, we're going  
14 to now label it "sex trafficking." I don't believe that's the  
15 intent of the statute, and especially the legislative history  
16 doesn't support that.

17 THE COURT: I don't know what the parade of horrors  
18 comes to in this situation. I'm not sure that there's the  
19 danger you speak. I think I understand the issue.

20 MR. SHILOH: Your Honor, I would simply ask this Court  
21 to look at the cases cited to by Judge Sweet in support of his  
22 reasoning. Those cases involve kidnapping, prostitution,  
23 selling people into slavery. Those are not the allegations  
24 that are conveyed here. Thank you, your Honor.

25 THE COURT: Thank you.

1 Let me deal with The Weinstein Company.

2 MS. BITAR: Karen Bitar, your Honor. Good morning.

3 THE COURT: Good morning.

4 MS. BITAR: Your Honor, I did not realize I would be  
5 addressing the Court. I was going to rely on the main brief.

6 THE COURT: Here's your big chance.

7 MS. BITAR: Okay. I will cede most of my time to  
8 whoever is going to advance the arguments in the main brief.  
9 I will make my comments with respect to TWC.

10 THE COURT: That's all I want you to do is TWC.

11 MS. BITAR: Right. Your Honor, as to these three  
12 plaintiffs, there is no evidence that TWC procured anything  
13 relating to the three of them. The complaint reads that they  
14 were introduced to Mr. Weinstein, Harvey Weinstein, either  
15 through happenstance or through an employment firm, an  
16 employment agency.

17 Even if we accept as true that with respect to the  
18 company arranging for meetings for some of these women to meet  
19 with Mr. Weinstein in various places across the world or  
20 securing a plane ticket or things of that nature, we don't  
21 believe that that rises to the level of constituting conduct in  
22 furtherance of a sex trafficking venture.

23 Also, your Honor, with respect to TWC sustaining a  
24 benefit as a result of Mr. Weinstein's conduct, we would argue  
25 that the fact that Mr. Weinstein, again, Harvey Weinstein,

1 remained employed at TWC and was able to continue to grow the  
2 company and create economic value for the company and cache for  
3 the company, which, yes, ultimately inured to the benefit of  
4 the company, is the kind of benefit that constitutes receiving  
5 a benefit under the sex trafficking statute with respect to  
6 TWC.

7 We submit that Mr. Weinstein benefited -- withdrawn --  
8 that the company benefited from Mr. Weinstein's legitimate  
9 business interests.

10 Lastly, your Honor, I don't believe there is  
11 sufficient evidence that The Weinstein Company was aware that  
12 Mr. Weinstein was engaging in fraud and coercion in connection  
13 with his actions with respect to Plaintiffs Geiss, Thomas, and  
14 Thompson.

15 THE COURT: Is there respondeat superior liability  
16 under the Sex Trafficking Act?

17 MS. BITAR: I don't believe so, your Honor, because I  
18 believe that conduct is not the type of conduct for which  
19 respondeat superior applies.

20 THE COURT: Let's say the commercial sex was not  
21 within the property of The Weinstein Company and for the  
22 purpose of interviewing people for roles or considering ideas  
23 for motion pictures, activities that are well within the  
24 employment relationship, why wouldn't that be respondeat  
25 superior liability?

1 MS. BITAR: First of all, your Honor, I don't believe  
2 that as to these plaintiffs, they were on TWC's chattel. So I  
3 don't believe that would apply here.

4 THE COURT: That it was what?

5 MS. BITAR: That it was on TWC's premises.

6 THE COURT: They were or were not?

7 MS. BITAR: They were not, your Honor.

8 THE COURT: I know Judge Engelmayer makes that point,  
9 but it seems to me like a company like The Weinstein Company,  
10 which is really selling services, that the services can be sold  
11 anywhere the company's officials go. So whether it's a hotel  
12 room in Manhattan or a Universal property lot in Los Angeles,  
13 it seems to me it really doesn't make much difference.

14 He's there to hire people, and one can argue that  
15 hiring talent that is complicit in the demand for sex may not  
16 be the best talent. It's not a decision made on the merits.  
17 So it may be argued that what Weinstein did was not within the  
18 best interests of the company, but nevertheless, he was doing  
19 it for the company.

20 Let me see what Ms. Fegan says.

21 MS. FEGAN: Your Honor, I agree with you. Here we  
22 have a situation where in fact one of the plaintiffs was --

23 THE COURT: Is there respondeat superior liability?

24 MS. FEGAN: Your Honor, the liability for purposes of  
25 the sex trafficking statute inures if the defendant knew or

1 should have known.

2 THE COURT: So there's no respondeat superior  
3 liability. There has to be complicity on the part of the  
4 company.

5 MS. FEGAN: Or should have known, your Honor. What we  
6 have here is TWC employees specifically setting up these  
7 meetings, buying his erectile dysfunction medication, making  
8 sure that he's not bothered when these women are put in the  
9 rooms with him, paying for his hotel rooms, and in effect  
10 having meetings with them in the hotel rooms, setting up the  
11 meeting through two different assistants with him so that Sara  
12 Ann would go to his home.

13 THE COURT: That wasn't the business of the company.  
14 The business of the company was not making it easy for Harvey  
15 Weinstein to have sex. The business of the company was to make  
16 very good movies.

17 MS. FEGAN: You're absolutely right, your Honor. So  
18 the standard under the statute is not whether they benefited  
19 from the sex act itself. It's whether they benefited from the  
20 venture. And the venture here overall, absolutely. The  
21 Weinstein Company was trying to make movies.

22 THE COURT: One could say that there was no benefit to  
23 the company. All the acts talk about were because of the  
24 demands of a very strong person who had an important role in  
25 the company and who could fire people if he didn't do what he

1 wanted them to do. But I don't see where the company benefits.

2 MS. FEGAN: Your Honor, if we look at the statute,  
3 what it says. It says two different things: First, did the  
4 person entice the individual, who is the victim, knowing and  
5 using fraud, enticing them with the idea that they would get a  
6 movie role.

7 And did the company know in this instance that  
8 Mr. Weinstein was doing that? Did they know or should it have  
9 known that he was using his power and prestige to lure these  
10 women under the guise that they were going to get a deal but  
11 really knowing that he was going to assault them? That is the  
12 case here, your Honor.

13 THE COURT: It is whoever knowingly entices. The  
14 company did not entice.

15 MS. FEGAN: That's right. So it's under number two.  
16 It's whether they received anything of value.

17 THE COURT: You can't say they received anything of  
18 value.

19 MS. FEGAN: From the venture, not from the sex act,  
20 from the venture which has engaged in an act knowing that --

21 THE COURT: Harvey Weinstein did use sexual favors as  
22 a means of choosing people. It's not in the interest of the  
23 company. It's the company's decision on the merits.

24 MS. FEGAN: Your Honor, it was in the interest of the  
25 company to protect him. It was in the interest of the company



1 to allow him to continue to do that because they didn't want to  
2 come down on him and let happen exactly what happened.

3 THE COURT: I'll take that under advisement, but I  
4 think the words "knowingly entices" precludes liability of the  
5 company.

6 MS. FEGAN: But there's an "or," your Honor.

7 THE COURT: And the fact that the company knew that  
8 Harvey Weinstein was enticing I don't think creates liability.  
9 But I'll look through it more.

10 MS. FEGAN: There is an "or" between those sections  
11 that I think is important because it does provide separate  
12 liability for people who participate.

13 THE COURT: Look where the "or" is.

14 MS. FEGAN: Correct.

15 THE COURT: Whoever knowingly applies to both  
16 subparagraphs one and two. And knowing that.

17 MS. FEGAN: There was also a 2008 amendment,  
18 your Honor. The 2008 amendment in Section 1595 added the  
19 phrase that liability can inure to a person that knew or  
20 "should have known." So that 2008 amendment is important to  
21 Ms. Thompson's claim which arose in 2011.

22 THE COURT: I think there are protections in the law  
23 for people who just knew. There has to be knowing assistance.  
24 It's an aiding and abetting claim essentially. Aiding and  
25 abetting requires more, but I have your arguments. Thank you.

1 MS. FEGAN: Thank you, your Honor.

2 MS. BITAR: Thank you, your Honor.

3 MR. SHILOH: Your Honor, may I respond to some points  
4 raised by some of your questions, as well as some statements  
5 made by Ms. Fegan?

6 THE COURT: No.

7 I'd like to discuss the case for Robert Weinstein.  
8 Robert Weinstein is represented by Mr. Kohn.

9 MR. KOHN: Good morning, your Honor.  
10 Specifically about the sex trafficking acts?

11 THE COURT: Yes.

12 MR. KOHN: There have been three motions to dismiss  
13 filed in different cases with respect to allegations very  
14 similar to the claims here against Mr. Weinstein, my client,  
15 Robert Weinstein.

16 Two judges have already dismissed, Judge Engelmayer in  
17 the Canosa case, Judge Sweet in the Noble case. There was a  
18 third case pending in federal court in California after we  
19 filed our motion to dismiss. The plaintiff elected to dismiss  
20 Mr. Weinstein, Robert Weinstein, from the case.

21 As the Sixth Circuit held in the Afyare case, the  
22 defendant has to be engaged knowingly in some aspect of  
23 trafficking. That's the case that Judge Sweet relied on in  
24 finding there can be no guilt by association for Robert  
25 Weinstein and that the plaintiff has to allege adequately that

1 he engaged affirmatively in some aspect of the trafficking.

2 THE COURT: This is the same discussion I just had  
3 with Ms. Fegan.

4 MR. KOHN: Effectively, yes, your Honor.

5 THE COURT: What do you say to that, Ms. Fegan?

6 MS. FEGAN: Your Honor, I would say that if you look  
7 at our allegations, Mr. Weinstein, Robert Weinstein,  
8 specifically authorized a bonus for an employee that bought  
9 erectile dysfunction medication that would be delivered to the  
10 hotel room --

11 THE COURT: Not because he delivered medicine.

12 MS. FEGAN: I'm sorry?

13 THE COURT: Not because he delivered medicine.

14 MS. FEGAN: No, but he knew it was happening. He  
15 allowed the employees to facilitate it, he approved of it, and  
16 in fact, he gave bonuses for it. That is far more than  
17 being --

18 THE COURT: He gave bonuses for that activity or for  
19 overall activity in the company?

20 MS. FEGAN: Bonuses for getting his erectile  
21 dysfunction medication and making sure it was in Harvey  
22 Weinstein's hotel room.

23 THE COURT: For that activity?

24 MS. FEGAN: Yes, your Honor. For assaulting the  
25 women. That's what Mr. Weinstein used the erectile dysfunction

1 medication for, in part at least. So, your Honor, I think  
2 based on the allegations, this is not passive.

3 THE COURT: Wait. I want to hear what Mr. Kohn says.

4 MR. KOHN: I'm not sure if this is being referred to  
5 Harvey Weinstein or Robert Weinstein.

6 THE COURT: Robert Weinstein.

7 MR. KOHN: Robert Weinstein is not alleged to have  
8 paid a bonus to Ms. Rehal for getting erectile dysfunction  
9 drugs for Harvey Weinstein.

10 MS. FEGAN: It is alleged that he approved The  
11 Weinstein Company to pay the bonus, your Honor.

12 THE COURT: As a director of the company.

13 MS. FEGAN: That's correct.

14 Is there a resolution to that effect?

15 MR. KOHN: That is not knowingly participating in some  
16 aspect of sex trafficking. If the board approved bonuses  
17 generally, there is no allegation that a bonus was approved  
18 specifically to purchase erectile dysfunction drugs.

19 THE COURT: Ms. Fegan alleges that.

20 MR. KOHN: Not in the complaint.

21 MS. FEGAN: We do, your Honor.

22 THE COURT: She alleges it.

23 MR. KOHN: The complaint actually alleges that Robert  
24 Weinstein was aware of the sex acts in The Weinstein Company  
25 offices and that my client, Mr. Weinstein, received a complaint

1 from Ms. Rehal about having to purchase erectile dysfunction  
2 shots. That's what the opposition brief says. That's not pled  
3 in the complaint here. In fact, it's not even pled in  
4 Ms. Rehal's complaint.

5 THE COURT: I'm missing what you're saying. Can you  
6 say it a little more clearly.

7 MR. KOHN: Yes. In the opposition, plaintiffs argue  
8 that Ms. Rehal alleged in her complaint that my client received  
9 a complaint from her that she had to purchase these erectile  
10 dysfunction drugs.

11 But that's not pled either in the plaintiff's  
12 complaint here. Nor is it actually pled in Ms. Rehal's  
13 complaint. The opposition is just embellishing the allegations  
14 that are in the actual complaint.

15 THE COURT: It's kind of bizarre to give a bonus just  
16 because some employee goes to the drugstore and buys a drug and  
17 gives it to Mr. Weinstein, Harvey Weinstein.

18 And it's kind of hard to extend liability to Robert  
19 Weinstein because as a director he didn't clamp down on this or  
20 vote to clamp down on this or vote to fire Harvey Weinstein. I  
21 don't think that makes out liability under the act, but I'll  
22 look into this further.

23 MR. KOHN: Thank you, your Honor.

24 THE COURT: Other directors. Who wants to speak?

25 MR. PUTNAM: I will, your Honor, very briefly. Marvin

1 Putnam. I represent Tim Sarnoff, as well as Miramax. For this  
2 I'm talking about Tim Sarnoff.

3 I want to make something very clear in case it's not  
4 in the papers. I believe it is, but since it hasn't come up  
5 today, I want to bring it up, which is in their opposition,  
6 plaintiffs make clear that there are certain outside directors  
7 that they are absolutely not going against in terms of sex  
8 trafficking despite the complaint. Those would be my client,  
9 Tim Sarnoff; Mr. Dolan, Mr. Tudor Jones; Mr. Lasry.

10 THE COURT: Is that true, Ms. Fegan?

11 MS. FEGAN: That is correct, your Honor.

12 THE COURT: So you won your point.

13 MR. PUTNAM: Now, I'd like to now go to the other  
14 directors if I may, unless someone else would rather do that.

15 THE COURT: So you're speaking for all the other  
16 directors?

17 MR. PUTNAM: Apparently I am.

18 This complaint is a complaint that goes after about  
19 150 different people and entities. And it's all about  
20 association, did you have an association with Harvey Weinstein  
21 and thereby there is some kind of guilt. And sex trafficking  
22 is the perfect example of this. Let me explain why.

23 It's the perfect example because what it does is  
24 plaintiffs attempt to conflate everything. It's the type of  
25 group pleading that's not allowed, but it's also the type of

1 complaint where they say something as to one entity or one  
2 person generally and then conflate it as to everyone else.

3 So, for example, here, in terms of the sex  
4 trafficking, there are two different sex trafficking statutes  
5 at issue as to these three plaintiffs. So first off, which was  
6 not done here, they have to be broken down that way.

7 As to two of them, you have to do the 2003 statute.  
8 As to the second, you have to do the 2008. Why that's so  
9 important here, your Honor -- I just want to be clear -- is  
10 because as to the first one, it goes directly to the arguments  
11 you're making, your Honor, about a perpetrator.

12 There they talk explicitly about going after a  
13 perpetrator. To be clear on that, your Honor, it requires  
14 actual knowledge within 2003. So if you look at that one as to  
15 two of the plaintiffs -- to be clear as to who they are. I  
16 want to make sure I get them right. One second. Geiss and  
17 Thompson. Thomas is as to the later 2008. Do I have that  
18 wrong?

19 MS. FEGAN: Yes.

20 MR. PUTNAM: Thank you. Is it Thomas and Thompson  
21 together?

22 MS. FEGAN: Yes.

23 MR. PUTNAM: So you have two of the three as to this.  
24 It's important to look at that, your Honor, because as of 2003,  
25 it requires actual knowledge, different than 2008. There is no

1 allegation of actual knowledge here, your Honor. If you look  
2 at it, that's why it talks about participation in the venture.

3 Plaintiffs' counsel just tried to note that  
4 participation in the venture can just be a broader venture such  
5 as the making of great movies. No. The case law is clear, and  
6 I quote: "Participation in a venture requires that the  
7 defendant actually participate and commit some overt act that  
8 furthers the sex trafficking aspect of the venture," and that's  
9 what Ayfare means which is in the briefing.

10 Now, that's but one example of the cases that you  
11 have. It's not a respondeat superior. So it really goes to  
12 all the other defendants who are not perpetrators in that  
13 instance, your Honor. There's just one other small note in  
14 that, and then I'll jump off. When it comes to this idea --

15 THE COURT: Slow your speech.

16 MR. PUTNAM: Sorry. I always do that. Sorry.

17 Is that the benefit under the statute that they talk  
18 about isn't this benefit of, you know, you get to go to great  
19 parties or you can go to the Oscars or something like that.

20 When they talk about benefit under the statute, the  
21 benefit is the value of the forced labor, and that's clear  
22 throughout. You can look at the case law. If that's the  
23 benefit that they're looking at, forced labor, if that's what  
24 he was trying to get the money for --

25 THE COURT: I don't think that's the issue.



1 Do you really think that's the issue, that the women  
2 were not paid for their time?

3 MR. PUTNAM: Are you asking me?

4 THE COURT: You, Mr. Putnam.

5 MR. PUTNAM: Under the statute, that's what it is,  
6 your Honor. Yes.

7 THE COURT: How do you read the statute to come to  
8 that?

9 MR. PUTNAM: It's from the case law, your Honor, and  
10 we have a whole section in the brief about this.

11 THE COURT: The problem with reading from case law on  
12 this subject is that cases are specific to the facts. And you  
13 have facts like that in those cases, but this is a different  
14 kind of case.

15 The value is not the time of committing a sex act. It  
16 was not stealing services. It was enticing people to have sex  
17 with Harvey Weinstein through fraud in the hope of getting  
18 better parts.

19 MR. PUTNAM: And then he didn't have it with these  
20 three. Look at Ayfare again.

21 THE COURT: It didn't happen, but they wanted it.  
22 That's why they were there. They didn't go to Harvey Weinstein  
23 because they admired his sexual capabilities and they were  
24 hungry for sex. They went because they wanted jobs. They  
25 wanted his word. They wanted to work with him. He was the

most successful movie producer in Hollywood. The value was the byproduct of this.

MR. PUTNAM: Who would that byproduct be here?

THE COURT: The trouble with the analogy is that there was no value that came to Harvey Weinstein from this. He was misusing people. He was manipulating people, but I can't see where he got a financial benefit.

MR. PUTNAM: Again, remember, your Honor.

THE COURT: The 2003 statute doesn't require it.

MR. PUTNAM: It doesn't, your Honor.

THE COURT: It does not.

MR. PUTNAM: If you look at Flores and the related cases, what they make clear is that you can't have too broad an interpretation of what constitutes a benefit. As to the director, what's required is affirmative knowledge of the link between the benefits and their alleged participation in sex trafficking.

THE COURT: Yes.

MR. PUTNAM: That does not exist here.

THE COURT: What do you say to that, Ms. Fegan?

MS. FEGAN: Your Honor, I think we are putting a break in the link that doesn't exist. These women met with him because they thought that he was going to offer them parts in movies or deals or contracts, and he offered that to them.

To now say that the defendants had to have gotten

1 value from the sex act as opposed to the very thing that these  
2 women went to his room for or to his office for, which was the  
3 contract and the deal, is putting two different standards on  
4 it.

5 THE COURT: So what are you saying? That Harvey  
6 Weinstein produced benefit for the company by limiting the jobs  
7 he would give out to those who would have sex with him?

8 MS. FEGAN: Potentially --

9 THE COURT: That doesn't strike me as giving value to  
10 the company.

11 MS. FEGAN: Can we focus on Ms. Thompson.  
12 Ms. Thompson did get a contract for her company.

13 THE COURT: It's almost like he couldn't get an  
14 actress, but those people who were enamored with Weinstein's  
15 sexual prowess were going to get a job. That's not right.

16 MS. FEGAN: Actually, your Honor if we could focus on  
17 Ms. Thompson. Ms. Thompson got the contract for her company,  
18 and then he raped her.

19 THE COURT: The companies, to the extent they knew or  
20 didn't know indulged Harvey. They indulged his appetites. He  
21 was a very powerful man, and no one was willing to stand up to  
22 him. But while he was successful, he was impossible to deal  
23 with. But to say that the company or the directors got benefit  
24 out of it a stretch.

25 MS. FEGAN: Your Honor, I respectfully disagree. If

1 the company knew that they were bringing in prostitutes, if the  
2 company knew that they were bringing in people from other  
3 countries and selling them, the Court would not be looking at  
4 this as being passive.

5 THE COURT: That's not what happened here.

6 MS. FEGAN: But what did happen, your Honor, is that  
7 they knew that he was using his contracts, his ability to make  
8 deals, to rape women. In fact, the company did benefit from  
9 the contract that Ms. Thompson's company got. It promoted  
10 several movies. They made money on it. She was involved in  
11 that. She actually -- there was commercial value and the  
12 company benefited.

13 THE COURT: She was hired because she had sex with  
14 Harvey Weinstein.

15 MS. FEGAN: No. She got the contract, and then he  
16 raped her after. He told her to come to the next meeting after  
17 she had gotten the contract. She believed it was to sign the  
18 contract, and in fact, he raped her. So she did not go there  
19 and then first have sex --

20 THE COURT: So he didn't entice her.

21 MS. FEGAN: He did entice her. He enticed her because  
22 he said, we're going to go sign this contract. So he said,  
23 you've got the deal. He made a call, and she believed she was  
24 going to sign the contract, and we've alleged that, your Honor.

25 THE COURT: I just can't see the benefit to the

1 company or to these other directors to this.

2 MS. FEGAN: Your Honor, the directors knew. They kept  
3 him in power. In fact, once it finally came out --

4 THE COURT: I will concede that specifically on this  
5 complaint and with regard to a motion to dismiss that the  
6 company knew that Weinstein was engaging in sex, and they knew  
7 that it was unwanted sex, and they kept him on.

8 Whether that makes the company a violator of the sex  
9 trafficking laws is another question.

10 MS. FEGAN: Understood, your Honor.

11 THE COURT: Certainly the directors who don't have an  
12 employment relationship with Harvey Weinstein but who have a  
13 relationship with the company itself and can approve or  
14 disprove contracts takes one step further removed.

15 MS. FEGAN: Except under negligent retention and  
16 supervision, your Honor.

17 THE COURT: Before we move to RICO, I need to have a  
18 short recess.

19 MS. FEGAN: Thank you, your Honor.

20 MR. BARTA: Your Honor, can I be heard on Schneeweiss  
21 with respect to the sex trafficking crime?

22 THE COURT: Yes. After the recess. You'll be first.

23 (Recess)

24 MR. BARTA: Robert Barta on behalf of Barbara  
25 Schneeweiss.

1 THE COURT: Go ahead.

2 MR. BARTA: Thank you, your Honor. I'll be brief.  
3 I'm not going to repeat what was previously stated by counsel.

4 THE COURT: You need to be louder.

5 MR. BARTA: I just want to address the specifics or  
6 lack of specifics as to my client in particular.

7 THE COURT: She's there because she got hotel rooms.  
8 She diverted meetings from the company offices to hotel rooms.  
9 She in effect enabled.

10 MR. BARTA: She was an assistant. She did her job.  
11 She was there --

12 THE COURT: Okay. That's the argument, the allegation  
13 of knowing assistants --

14 MR. BARTA: There is no allegation of knowledge.  
15 That's the issue. Their pleadings have no allegation of  
16 knowledge. What they have is they say she knew or should have  
17 known. And the only factual allegation --

18 THE COURT: That's knowledge.

19 MR. BARTA: I have it here, your Honor. The only  
20 factual allegation they say is that she didn't look at someone  
21 in the eye.

22 THE COURT: I'll look at this again, but the  
23 interesting question to me is whether an employee of Harvey  
24 Weinstein told to do certain things which enabled him to  
25 function for the company and to indulge himself in private sex

causes the employee to be complicit in what Harvey Weinstein did.

MR. BARTA: Under the Act, you have to have more. You also have to have a commercial benefit to that employee.

THE COURT: This was her job.

MR. BARTA: There is no commercial benefit pled.

THE COURT: That's a commercial benefit, to keep her job.

MR. BARTA: It's not pled. I'm dealing with what the --

THE COURT: That's not how I understand the pleadings. I don't have to have an absolutely perfect pleading. This is not demurrer practice. It's implicit in the pleadings, if not explicit, that Ms. Schneeweiss knew that she furthered his acts.

And my question is that since she did it as an employee of the company acting in her job following the directions of her boss, which was Harvey Weinstein, whether she can be liable under the Act.

MR. BARTA: Your Honor, I believe there was an argument earlier about expanding this Act. And if you are to keep her in this lawsuit on the basis of what is alleged that she did which is simply to do her job to set up appointments, it was understood and recognized that Weinstein -- he carried out his appointments and legitimate appointments.

1 THE COURT: It's an aiding and abetting issue really  
2 Ms. Fegan. Aiding and abetting requires not only a knowing  
3 assistance, but there must also be a mindset almost to the  
4 point of sharing the purposes of the perpetrator.

5 MS. FEGAN: Your Honor, there are two different  
6 standards. One is knowing, and second post 2008 is should have  
7 known. With respect to Ms. Schneeweiss, we have specifically  
8 alleged --

9 THE COURT: I'm granting that she should have known.

10 MS. FEGAN: Correct, your Honor.

11 THE COURT: I'm granting you that. It's a motion to  
12 dismiss, not a motion for summary judgment.

13 MS. FEGAN: Thank you, your Honor.

14 THE COURT: How can you attach liability to an  
15 employee who is not getting any personal benefit out of this?  
16 She's doing the job because she's got a powerful boss who wants  
17 to do terrible things and she has no choice in it.

18 MS. FEGAN: Your Honor, there were employees at the  
19 company that were only there for a couple years and left.  
20 Ms. Schneeweiss was at Miramax. She was there. She was the  
21 vice-president of television, and she followed Mr. Weinstein to  
22 The Weinstein Company and was vice-president of production.  
23 She got a promotion.

24 She had a choice, and she stayed with him for 21  
25 years, your Honor. She had a choice, and she made a choice.



1 She knew what she was doing. In fact, when several of our  
2 plaintiffs complained to her that they didn't want to meet  
3 privately with him, she assured them that they would be okay  
4 knowing that they wouldn't be.

5 So, your Honor, Ms. Schneeweiss is not a passive  
6 employee. We haven't sued 150 people. We haven't sued  
7 employees that got caught up for a year or two and perhaps are  
8 victims themselves.

9 She was a 21-year participant in what Mr. Weinstein  
10 did, at least for the period that the Victims Protection Act  
11 provides for private liability for the last ten years. She  
12 should stay in the case, your Honor.

13 MR. BARTA: Your Honor, what we're hearing is  
14 argument. Those statements are not alleged in the complaint.

15 THE COURT: That is her argument but fairly derived  
16 from the allegations in the complaint. I'm not going to  
17 dismiss the complaint for deficiencies at this point.

18 MR. BARTA: I understand that. The question though is  
19 does an employee who goes into an entertainment organization  
20 who has the expectation of rising within the ranks because most  
21 young people who start at talent agencies, production  
22 companies, studios have an expectation that they're going to  
23 grow with that company.

24 So the fact that they indeed fulfilled that  
25 expectation of growing with the company and rise through the

1 ranks of a very large organization and during the course of  
2 that they follow the instructions of their employer, can they  
3 now be held liable for an aiding and abetting because that  
4 employer has engaged in unlawful conduct?

5 I would think not. I think that's extending exposure  
6 and liability to a whole cadre of people who will have a  
7 floodgate of litigation that will arise from that. Thank you,  
8 your Honor.

9 THE COURT: Thank you. Let's do RICO.

10 MR. SHILOH: Your Honor, may I be heard further on the  
11 sex trafficking point?

12 THE COURT: Who do you represent?

13 MR. SHILOH: Harvey Weinstein.

14 THE COURT: No. We already did that.

15 Is there any director who wishes to be heard on the  
16 Victims Protection Act on the trafficking law?

17 All right. Let's do RICO.

18 Let me ask you, Ms. Fegan. How do you get an injury  
19 to business of property?

20 MS. FEGAN: Your Honor, we have specifically alleged  
21 here, by way of example, that one plaintiff was told in  
22 December of 2017 that she was blacklisted for complaining about  
23 Harvey Weinstein. In fact, we allege that she has seen an  
24 86 percent drop in auditions as a result of being blacklisted.

25 We have alleged that another plaintiff didn't get the

1 parts in Beautiful Girl and Things to Do in Denver When You're  
2 Dead, even though she was told she had parts, because she was  
3 blacklisted.

4 Your Honor, these women could not have known at the  
5 time they didn't get the parts. We allege other movies also,  
6 specific movies by name, specific distributors, specific  
7 producers.

8 At the time these women didn't get parts, they could  
9 have been told they were not tall enough, they were not pretty  
10 enough, any number of things. What they were not told and what  
11 they could not have discovered until the fall of 2017 was that  
12 the reason that they didn't get these very specific parts was  
13 because Harvey Weinstein had interfered and blacklisted them  
14 for not going along with his sexual assaults.

15 THE COURT: You say that he blacklisted.

16 Does that mean any more than he decided he would not  
17 hire them?

18 MS. FEGAN: It does. In these particular instances,  
19 it means that these women were told by producers and directors  
20 that they had the part. They were perfect. And then he came  
21 in and interfered with that, and he basically came in and said,  
22 no. You can't hire her. Do not hire her, and she didn't get  
23 the part.

24 THE COURT: What is the basis of your allegation?

25 MS. FEGAN: It depends on the person, your Honor. In

1 several of these we have listed a particular producer like  
2 Miramax's Scott Rosenberg who had told Delaney, Ms. Delaney,  
3 that she was going to get a part.

4 THE COURT: That's Weinstein's company; right?

5 MS. FEGAN: That's correct. Scott Rosenberg was a  
6 producer that would freelance or come in and do work for them.

7 THE COURT: Yes, but if Harvey Weinstein came and  
8 said, I don't want you to hire this woman, that doesn't mean  
9 she's blacklisted. It means Harvey Weinstein won't hire her.

10 MS. FEGAN: Your Honor, we allege that these are  
11 producers that aren't employees per se. They come in and do  
12 coproductions. So what we have is Buena Vista. We have  
13 Dimension Films. We have Miramax.

14 Different producers or directors come in or casting  
15 directors, outside companies. And he would go in and say, no.  
16 Don't cast these people. So, your Honor, that is blacklisting.  
17 You can't do that and interfere with somebody's career.

18 That career damage is quintessential RICO injury,  
19 your Honor. In fact, there are several cases that talk about  
20 where the purpose of the RICO scheme, the coverup, the  
21 blacklisting or the black cubing was to injure the person's  
22 career. That in the Second Circuit is RICO damage and RICO  
23 injury.

24 THE COURT: Your pleading though is that the women  
25 suffered terrible emotional injury from having been forced to

1 do things with Harvey Weinstein that had economic consequences  
2 in their ability to get jobs. An economic consequence is  
3 personal injuries and not actionable under RICO.

4 MS. FEGAN: Your Honor, for purposes of RICO injury,  
5 I'd ask the Court look at paragraph 829 of our complaint. That  
6 is under the RICO count cause of action. Specifically there,  
7 we allege a paragraph for each individual plaintiff and the  
8 particular parts where we have them.

9 THE COURT: Let me get them.

10 MS. FEGAN: Sure. It starts on 234, your Honor, it  
11 starts and goes on to 235 and 236.

12 So there is a emotional distress damage, your Honor,  
13 for the assaults. We are not seeking recovery for that under  
14 RICO. Under RICO, we are seeking recovery for career damage  
15 caused by Mr. Weinstein.

16 While the lawsuit does include emotional distress  
17 damages, your Honor, in this particular cause of action, we're  
18 not seeking emotional distress damages.

19 THE COURT: Say that again.

20 MS. FEGAN: While the lawsuit generally with respect  
21 to the tort claims and the sex trafficking claims seeks  
22 emotional distress damages, we are not seeking emotional  
23 distress damages under the RICO cause of action.

24 THE COURT: Mr. Shiloh, do you want to respond?

25 MR. SHILOH: Yes, your Honor. Your Honor, I'm just

1 only going to address --

2 THE COURT: I appreciate that you don't rely on the  
3 briefs for the purposes of shortening your arguments. If I  
4 wanted to read the briefs for the point I'm deciding, I  
5 wouldn't need oral argument. I have oral argument now. Make  
6 your point.

7 MR. SHILOH: The point is that when we were first here  
8 on a motion to dismiss, you provided a how-to guide on how to  
9 plead a RICO claim. You went step-by-step in court to  
10 Ms. Fegan about what needed to be in the complaint.

11 Well, the second complaint was filed. I've reviewed  
12 it. It does not comply with the instructions that you provided  
13 to counsel. All of the alleged injuries are speculative, and  
14 speculative damages are not considered damages under RICO.  
15 There are personal injury damages.

16 THE COURT: Give me an illustration of what is  
17 speculative.

18 MR. SHILOH: Yes, your Honor. Paragraph 830f.,  
19 Weinstein and Miramax did not hire Klatt for the movie for  
20 which she was told she was perfect."

21 I'm told a lot of things. That doesn't guarantee that  
22 I'm given what I'm told.

23 THE COURT: The problem, Mr. Shiloh, is that you have  
24 now a motion under Rule 12(b). I have to accept the  
25 allegations that are plausibly alleged, and this is plausibly

1 alleged.

2 This whole subset A to J may not stand up and aren't  
3 enough to state a claim if they are an injury to business or  
4 property. It's clear from the cases that you don't need money  
5 or actually property. Intangibles satisfy the law. You can  
6 have an intangible that is an injury to business or property.

7 MR. SHILOH: Your Honor, I still don't believe they've  
8 properly pled under the pleading standard. They don't identify  
9 any lost contracts. Rather, they insist they would have had  
10 successful film careers but for the alleged conduct.

11 THE COURT: Mr. Shiloh, it's a complaint, not a bill  
12 of particulars. It's not actionable for a motion on that  
13 grounds.

14 What else do you have?

15 MR. SHILOH: What else I have is simply that they  
16 don't properly plead damages.

17 Are we specifically focusing on the injury portion of  
18 the RICO claim, your Honor? I have a lot else to offer, but I  
19 want to know what you'd like.

20 THE COURT: Starting with injury to business or  
21 property.

22 Does anyone else have anything to contribute on the  
23 injury to business or property?

24 Okay. Make another point.

25 MR. PUTNAM: Your Honor, to business, I do, your

1 Honor, if I may.

2 THE COURT: Yes.

3 MR. PUTNAM: Marvin Putnam, your Honor.

4 I'm going to address directly some questions that you  
5 posited, your Honor, both last time and today because I think  
6 they go together quite well.

7 The first is this idea of injury. Last time you made  
8 very clear that economic consequences of personal injury are  
9 not actionable under RICO.

10 THE COURT: Yes. They fixed that up.

11 MR. PUTNAM: Let me see if they did fix that up,  
12 your Honor. If you look at the paragraph you just noted which  
13 was paragraph 829 and you go through those and you compare  
14 that, compare it to the complaint, what you will note is in  
15 every instance except for the one where they say blackmail in  
16 2017 -- so it's not listed in 2017 -- every one of those  
17 predates the time period we're talking about and are barred by  
18 the statute of limitations.

19 THE COURT: We're just doing injury to business or  
20 property.

21 MR. PUTNAM: Yes, your Honor. What I want to note is  
22 what's important -- well, okay.

23 THE COURT: I'll give you a chance on statute of  
24 limitations.

25 MR. PUTNAM: If I may then, your Honor. The other



1 point of this was just noted by plaintiffs' counsel which is  
2 the idea she said it's the scheme. I think that's a hundred  
3 percent correct. It's about the scheme.

4 Here the issue for scheme is racketeering, knowledge  
5 of racketeering activity, which is what blacklisting is. It is  
6 not an injury. The injury is the actual injury, and that is  
7 what you have to have notice of.

8 I just want to remind the Court of what we talked  
9 about last time. The scheme is racketeering. You don't have  
10 to have notice of racketeering.

11 THE COURT: You can take that up at the next subject,  
12 Mr. Putnam.

13 MR. PUTNAM: All right.

14 THE COURT: Thank you, Mr. Putnam. You need a  
15 racketeering act. Blacklisting is not included in a  
16 racketeering act.

17 MS. FEGAN: Your Honor, there are three types of  
18 predicate acts that we've alleged here. There is the sex  
19 trafficking, there's mail and wire fraud, and there's tampering  
20 with a victim.

21 Ultimately, your Honor, the entire scheme to defraud  
22 that's set forth was to cover up the original sexual assaults  
23 for the original sex trafficking, your Honor.

24 THE COURT: What does that have to do with emotional  
25 injury? The injury to business or property has to flow from

the pattern of racketeering activity.

MS. FEGAN: That's right, your Honor. So the pattern of racketeering and the mail and wire fraud that was used to implement this was to interfere with the women's business expectations with real interests here where they were told that they were going to get particular parts or particular deals. And he interfered with those, and he used others to help interfere with those.

So what we've alleged by way of example with respect to Ms. Thompson, in 2017 --

THE COURT: Sex trafficking is not one of the examples of racketeering activities.

MS. FEGAN: It is, your Honor. It is both alleged, and it is a recognized predicate act under RICO.

THE COURT: Sorry. You're right. But that causes the emotional injury, a direct result of the sexual trafficking.

MS. FEGAN: It does, your Honor.

THE COURT: It's emotional injury. The blacklisting is something different from the sex act. That's punishment.

MS. FEGAN: Your Honor, the injury under RICO does not have to be sex trafficking career damage. There has to be a relationship. Obviously there has to be a causation.

That relationship under Second Circuit law is -- courts have discussed this because all courts recognize that the sex trafficking itself is going to have emotional distress

1 damages. The question is did it impact these women's ability  
2 to earn a living.

3 THE COURT: That won't be good. The impact of  
4 emotional injuries on business or property is not such.

5 MS. FEGAN: You're right, your Honor. What we have  
6 here is Mr. Weinstein and others specifically interfering to  
7 take away career movies, to take away deals, to take away  
8 promises, to take away parts that they were told that they got  
9 and then taking those away from them.

10 THE COURT: That's not trafficking.

11 MS. FEGAN: I understand, your Honor. What the case  
12 law talks about is what happens after the trafficking, does the  
13 scheme continue to ensure that the women are hurt monetarily,  
14 and that is what happened here, your Honor.

15 THE COURT: It's a distraction.

16 MS. FEGAN: Your Honor, I think a review of the case  
17 law shows that courts struggle with this because sex  
18 trafficking and injury to property sound like two different  
19 things, and where courts have come out is if the scheme  
20 continues such that the women lose business, lose contracts  
21 like they have here, that that would constitute injury under  
22 RICO that is recognized.

23 Congress didn't intend for RICO -- for predicate acts  
24 which it has defined to be compensable under RICO to preclude  
25 the injury to property when that sex trafficking comes in to

1 make sure that their life is ruined by taking away specific  
2 deals or movies.

3 THE COURT: Thank you.

4 MS. FEGAN: Thank you.

5 THE COURT: Any other defendants on any aspect of  
6 RICO?

7 MR. PUTNAM: On predicate acts, your Honor?

8 THE COURT: Anything in RICO.

9 MR. PUTNAM: Yes.

10 Marvin Putnam, your Honor.

11 A couple things. I first want to go through the idea  
12 of the three predicate acts because, again, there are very  
13 different claims as to different defendants, and it's very  
14 important not to group them all together as is consistently  
15 being done because when you actually break them apart, they are  
16 very different claims.

17 So first of all, as to the sex trafficking claim which  
18 is one of the three predicate acts alleged, that became an  
19 issue on December 19, 2003. It was resolved. It has no effect  
20 going backwards.

21 As a result, as to Miramax --

22 THE COURT: That's statute of limitations.

23 MR. PUTNAM: Exactly. I don't think that is just  
24 statute of limitations, your Honor. It's whether there is a  
25 predicate act. There can't be a predicate act in this instance

1 since you have to have two under RICO if it literally isn't the  
2 effect.

3 Do you see what I mean, your Honor?

4 THE COURT: No. I'm missing it.

5 MR. PUTNAM: Three predicate acts are alleged: Sex  
6 trafficking, witness tampering, and the third is -- I'm sorry.  
7 I have to remember.

8 THE COURT: Mail and wire fraud.

9 MR. PUTNAM: Thank you. As to the sex trafficking,  
10 they've alleged, as we noted five minutes ago, that sex  
11 trafficking is not relevant as to Tim Sarnoff and a number of  
12 outside directors in terms of the latter period.

13 That was admitted five minutes ago. So it can't be a  
14 predicate act of sex trafficking as to them. As to Miramax,  
15 there cannot be a predicate act of sex trafficking because it  
16 did not become a part of the RICO statute under December 19,  
17 2003.

18 THE COURT: What is not?

19 MR. PUTNAM: Trafficking did not become a predicate  
20 act under RICO until that date.

21 THE COURT: 2003?

22 MR. PUTNAM: Exactly. As to 2003. So as to Miramax,  
23 all the plaintiffs' claim all the supposed acts are prior to  
24 that date. So as a result, sex trafficking cannot be a  
25 predicate act as to Tim Sarnoff or the other outside directors

1 because that was admitted earlier.

2           They did not have that. That's the footnote we talked  
3 about five minutes ago. You cannot have a predicate act as to  
4 Miramax because it wasn't part of the RICO statute at that  
5 time. So that predicate act has to be out.

6           THE COURT: What do you say to that, Ms. Fegan?

7           MS. FEGAN: Your Honor, with respect to Miramax  
8 specifically, there is specific case law that talks about  
9 whether you can take a predicate act that's added and apply it  
10 backwards.

11           And as long as there is one predicate act after the  
12 time that it is implemented, it can also roll backwards, and it  
13 does not violate the ex post facto laws.

14           THE COURT: Which act is timely?

15           MS. FEGAN: As long as there is one timely  
16 racketeering act, you can also look back to old acts that might  
17 not have been racketeering at the time.

18           THE COURT: It's a pattern. So that's the way you get  
19 around the statute.

20           MS. FEGAN: That's correct, your Honor, with respect  
21 to Miramax.

22           MR. PUTNAM: If the Court would look at the briefing  
23 on Snowden which they're relying on to see how it does not in  
24 fact rely on it.

25           THE COURT: Tell me about it.

1 MR. PUTNAM: I'm trying to remember. I'll look real  
2 quickly if you'll let me, your Honor.

3 If you look at the case they rely on, that's looking  
4 at the original, going back to the original RICO statute. So  
5 if you look at that, it doesn't apply to the statute that's  
6 actually in play here. So it absolutely does not apply here.

7 So this idea of relating back, and moreover, in terms  
8 of Miramax, there actually, your Honor, is no later RICO act  
9 they talk about in terms of Miramax within the sex trafficking.  
10 So it does not relate back, the way it was noted.

11 May I continue to the two other predicate acts?

12 THE COURT: Yes.

13 MR. PUTNAM: In terms of the two other predicate acts,  
14 in terms of Miramax, for witness tampering, your Honor, you had  
15 indicated at the last hearing that you thought witness  
16 tampering was out because of the idea that there was no  
17 official proceeding, and I think that remains true here.

18 They have not alleged any official proceeding for  
19 witness tampering. There is no potential witness to tamper  
20 with. That's true for I believe everyone involved here, but  
21 it's certainly true for Miramax, as well as Sarnoff and the  
22 outside directors.

23 I'd go further in terms of the relevance of that for  
24 the outside directors which is the idea that also -- there was  
25 an idea that all they say about tampering with witnesses,

1 your Honor, is they talk about this idea of Black Cube and this  
2 spy network. They did not do anything to show that the outside  
3 directors had anything to do with that.

4 As you also noted last time, Your Honor, you indicated  
5 that if you're going to have a predicate act, you're going to  
6 have to specifically indicate as to each of the defendants, and  
7 thereby each of the outside directors, how they participated in  
8 some way. There is nothing as to witness tampering that goes  
9 to any of that.

10 THE COURT: There was an association, and the  
11 enterprise is defined as the Harvey Weinstein sexual  
12 enterprise, some name like that. It could become an enterprise  
13 if there is some commonality of purpose or some commonality of  
14 membership and a continuous program. I think for our purposes,  
15 that may be satisfied.

16 So if one is associated with the enterprise, the  
17 pattern of racketeering activity can be performed by any member  
18 of the association. There is enterprise liability potentially  
19 to business or property by each and all the members who are  
20 associated with the enterprise. So I don't know that I accept  
21 what you're saying.

22 MR. PUTNAM: But, your Honor, here is the thing about  
23 enterprise which is true throughout all of the case law. If we  
24 go to the idea of enterprise, there has to be a connection  
25 between each of the entities and what the enterprise ostensibly



1 is. Here --

2 THE COURT: You know how it's defined. It's a strange  
3 definition, but it's defined in terms of Harvey Weinstein's  
4 sexual proclivities, the organization that was created to  
5 support --

6 MR. PUTNAM: To support his sexual activities.

7 THE COURT: Yes.

8 MR. PUTNAM: Your Honor, if you go back and look as to  
9 the outside directors, there is no connection made in the  
10 complaint anywhere as to the outside directors and the  
11 furtherance --

12 THE COURT: The argument is that they're not  
13 associated with the enterprise.

14 MR. PUTNAM: Exactly. With the enterprise as  
15 indicated. You can't just say generally all these entities are  
16 part of the enterprise and then not specifically argue as to  
17 how each is connected to another entity within the furtherance  
18 of that enterprise.

19 THE COURT: What's your argument, Ms. Fegan?

20 MS. FEGAN: Your Honor, we do specifically allege how  
21 each of the directors is connected, if that's where we're  
22 focusing. In our complaint, we did not replead. We provided a  
23 specific section for each individual director, as well as a  
24 separate section about what the board did collectively. But  
25 with respect to knowledge and participation, we specifically

pled it.

We've also, with respect to the directors, specifically talked about mail and wire fraud. And what we've done here, I list all of the paragraph numbers in footnote 250 of our brief, but we specifically show all the different kinds -- and there are dozens -- of allegations about how the mails and wires were used to ensure that he stayed in power, to ensure that it continued to be covered up, to ensure that basically nobody knew what he was doing because it would cause the fall of TWC which is what ultimately happened.

So, your Honor, for purposes of pleading, we have absolutely taken this Court's instructions to ensure that we have specifically delineated with respect to each individual defendant their participation.

Of course when the board acted together, we also talk about board meetings collectively, but we're very specific about who was on the board.

THE COURT: I have your two arguments. Thanks. Let's talk about statute of limitations.

MS. SERPE: Your Honor, may I be heard briefly with respect to Mark Gill. Sylvia Serpe.

THE COURT: Yes.

MS. SERPE: Your Honor, Mark Gill was the president of Miramax way back when, from 1994 to 2002. And I just want to briefly take us back to the basics because this is a very

1 serious allegation of RICO, of fraud. As we know, RICO and  
2 fraud allegations must be alleged with particularity, and that  
3 is especially not true for someone like Mr. Gill.

4 I think the reasons behind particularity are worth  
5 very quickly just going through. First of all, they're to  
6 protect individuals against the harm to their reputations.  
7 Second of all, it's to give people like Mr. Gill notice of what  
8 they're actually being alleged to have done wrong. And third,  
9 it's to inhibit the filing of a complaint as a mere pretext for  
10 discovery for unknown wrongs. And that all comes from the  
11 Airlines case which I cite at page 3 of the Mark Gill case.

12 THE COURT: Mr. Gill was alleged to be associated with  
13 the enterprise.

14 MS. SERPE: There are no allegations specific to  
15 Mr. Gill with respect to RICO. There is no predicate act --

16 THE COURT: The entire board.

17 MS. SERPE: He was the president of Miramax. He is  
18 not alleged to have engaged in sex trafficking. He is not  
19 alleged to have tampered with any witness.

20 THE COURT: Ms. Fegan.

21 MS. SERPE: And he's not alleged to have committed any  
22 wire fraud.

23 THE COURT: Ms. Fegan, what's the paragraph I should  
24 look at?

25 MS. FEGAN: Your Honor, I will have to look at a

1 specific paragraph. I can tell you the quotes that I have with  
2 respect to him that we allege in our complaint.

3 THE COURT: Go ahead.

4 MS. FEGAN: We do allege that he was the president of  
5 Miramax. He has admitted -- and this is his quote -- that  
6 Weinstein's treatment of women was "the biggest mess of all."  
7 He admitted that if a female executive was asked to go to a  
8 meeting solo, she and a colleague would generally double-up so  
9 as not to be alone with Mr. Weinstein.

10 We allege that he was engaged in mail and wire fraud  
11 because he was engaged in the coverup of letting this happen  
12 internally. Your Honor, we cannot know under 9(b) the specific  
13 times he used the fax machine and the specific emails he sent,  
14 and that will come out in discovery. But we do know, based on  
15 his admissions and the quotes that we have in the complaint,  
16 that he knew. He covered it up.

17 THE COURT: I think that's enough of an allegation,  
18 Ms. Serpe.

19 MS. SERPE: Respectfully, your Honor, that knowledge  
20 is not in the particularity requirements which is required for  
21 a civil RICO which is very serious.

22 THE COURT: I think it's enough.

23 MS. SERPE: Thank you.

24 MR. PUTNAM: Your Honor, could I just state one thing.  
25 I won't even get up.

1 THE COURT: I've heard.

2 MR. SHILOH: Your Honor, I'd like to address the  
3 predicate acts on behalf of Harvey Weinstein.

4 THE COURT: Yes.

5 MR. SHILOH: Your Honor, with respect to the sex  
6 trafficking claim we addressed earlier, we don't believe that  
7 there was a commercial exchange. If we adopt Judge Sweet's  
8 opinion, the entire plaintiffs' employment bar would have to  
9 amend all of their complaints if we apply his reasoning.

10 Moving on to the witness tampering, there was no  
11 official proceeding. With respect to the mail fraud, in  
12 reading the transcript --

13 THE COURT: Don't repeat arguments that were already  
14 given.

15 MR. SHILOH: Yes, your Honor. With respect to the  
16 wire and mail fraud component of predicate acts, there is a  
17 heightened pleading standard under 9(b). Going through the  
18 allegations found --

19 THE COURT: The allegation is that the people were  
20 enticed to come to hotel rooms with a promise of jobs.

21 MR. SHILOH: However, when alleging the specific  
22 predicate acts by use of mail and wire fraud, they're supposed  
23 to set forth those misrepresentations. There are no  
24 misrepresentations contained in the complaint, your Honor.

25 THE COURT: That's the misrepresentation, the

misrepresentation of the purpose is the enticement. It's done by fraud, come to my hotel room to discuss a part.

MR. PUTNAM: But, your Honor, the who, what, where is not alleged. The only basis is they're relying on a magazine article for the basis of their complaint.

THE COURT: It's sufficiently alleged at this point. Thank you. Stay up for statute of limitations.

MR. SHILOH: Yes, your Honor.

THE COURT: Are you going to do that, or is someone else going to do that?

MS. DAVIS: Good afternoon, your Honor. Abbey Davis of Skadden, Arps.

Your Honor, I want to start with the RICO statute of limitations here. As you're well aware, it's a four-year statute of limitations. What plaintiffs have alleged here and what they've argued in their opposition is that they need to have known the full extent of this alleged RICO enterprise in order for the statute of limitations to begin running.

So what they've argued in their opposition is that that did not happen until 2017. However, as Ms. Fegan pointed out correctly earlier, paragraph 830 of the complaint lays out in detail in subparagraphs for each plaintiff the alleged RICO injury for each plaintiff.

Setting aside whether those allegations are sufficient to allege RICO injuries, one thing becomes clear. All of those

1 subparagraphs refer back without internal citations to earlier  
2 parts of the complaint.

3 And if you look at the allegations in the earlier  
4 parts of the complaint, all of those alleged RICO injuries took  
5 place in or around 2011 or well before. That means that the  
6 RICO statute of limitations began to run at that time.

7 What Ms. Fegan had argued in prior oral argument for  
8 the motion to dismiss originally is that the plaintiffs could  
9 not have known the reason that they were "blacklisted" at the  
10 time of these alleged RICO injuries.

11 However, the allegations in the complaint belie that  
12 assertion. We can walk through plaintiff by plaintiff. For  
13 Ms. Geiss, at paragraph 250 of the complaint: "She concluded  
14 that she could not perform sexual acts with Weinstein in  
15 exchange for a career."

16 That is certainly knowledge or at least inquiry notice  
17 that any harm to her career was caused by Harvey Weinstein and  
18 her decision not to engage sexually with him.

19 Moving on next to Ms. Thomas.

20 THE COURT: That's not an allegation of damage though  
21 in 250.

22 MS. DAVIS: Well, her allegation of damage,  
23 your Honor, is that she lost a three-film deal and other  
24 opportunities at TWC because of her unwillingness to enter into  
25 this relationship with Mr. Weinstein. And the fact that she

1 alleges --

2 THE COURT: Well before the four-year period.

3 MS. DAVIS: Exactly, your Honor. So moving on next --

4 THE COURT: What should I do with this blacklisting  
5 argument that the plaintiffs discovered in 2017?

6 MS. DAVIS: Well, your Honor, the problem with that  
7 argument is that all of these plaintiffs within specific  
8 paragraphs of the complaint allege that they either knew or  
9 were told by Mr. Weinstein or others in the entertainment  
10 industry or were at least on inquiry notice that any harm to  
11 their careers was going to be caused by Mr. Weinstein and by  
12 their unwillingness to enter into these relationships with  
13 Mr. Weinstein.

14 Your Honor, I'd like to walk you through them if I  
15 may.

16 THE COURT: Okay.

17 MS. DAVIS: Ms. Thomas. Ms. Thomas was informed that  
18 she did not receive a nanny job in 2008 shortly after the  
19 meeting. The specific allegation that I want to focus on is in  
20 paragraph 263: "A few days --"

21 THE COURT: Give me a moment to find the paragraph.

22 MS. DAVIS: Yes, your Honor.

23 THE COURT: Okay.

24 MS. DAVIS: So "A few days after that interview to  
25 become Mr. Weinstein's nanny, she was informed that she did not



1 get the job because she was an actor. However, the fact that  
2 Ms. Thomas was an actor was known to the assistants and  
3 Weinstein before they interviewed her. The reason Thomas was  
4 not hired was because she did not respond to Weinstein's  
5 propositions."

6 So she knew at the time in 2008 that the reason she  
7 did not get that job was because she was unwilling to consent  
8 to A sexual engagement with Mr. Weinstein. So that's  
9 knowledge. It's not even just inquiry notice there.

10 MS. FEGAN: Your Honor, may I respond to that on that  
11 person?

12 THE COURT: Why don't you take a note when Ms. Davis  
13 finishes.

14 MS. FEGAN: Okay. Thank you.

15 MS. DAVIS: Next, your Honor, moving on to the  
16 subparagraph C of paragraph 830 which resolves around  
17 Ms. Thompson.

18 Ms. Thompson alleged that --

19 THE COURT: What paragraph?

20 MS. DAVIS: If you want to look starting at paragraph  
21 298 of the complaint. She is allegedly here reporting the  
22 alleged assault with Mr. Weinstein in 2011 because "she knew  
23 that Weinstein could and would destroy her." And a further  
24 allegation of knowledge appears --

25 THE COURT: So the cause of action arose in --

1 MS. DAVIS: 2011. There is a further allegation of  
2 knowledge, your Honor, at paragraph 271. Weinstein "made clear  
3 that she had to play if she wanted his business."

4 At paragraph 298: "She knew that Weinstein could and  
5 would destroy her if she complained about his sexual  
6 misconduct." So, again, knowledge or at least a storm warning,  
7 which is all that's required to start the clock running on a  
8 statute of limitations for a RICO claim.

9 Next Ms. Gomes. She alleged that she had an  
10 interaction with Mr. Weinstein in 2000. This is 830d. of the  
11 complaint. If you compare that to paragraph 202, which is her  
12 alleged RICO injury, that she never worked with Miramax or  
13 Weinstein again, knowledge is alleged at paragraph 199.

14 That paragraph alleges that at the time of the  
15 assault: "She was devastated that Mr. Weinstein's interest in  
16 her had not been genuine and that she would never be part of  
17 the Miramax talent pool."

18 So she knew -- and she alleges that she knew -- back  
19 in 2000 that it was Mr. Weinstein and her failure to engage  
20 with him sexually that would lead to this alleged harm to her  
21 career.

22 THE COURT: Let me stop you there, Ms. Davis.

23 Ms. Fegan.

24 MS. FEGAN: Your Honor, several things. Let's start  
25 with Ms. Thomas who was the nanny. We're not seeking recovery

1 for the fact that she did not get the nanny job. We're seeking  
2 recovery for the fact that in November 2017, she was told that  
3 she was blacklisted in the industry because of Mr. Weinstein --

4 THE COURT: What Ms. Davis said, reading out your  
5 allegations, is that she knew that well before.

6 MS. FEGAN: Your Honor, she knew she didn't get the  
7 nanny job. She didn't know that he was going to prevent her  
8 from getting other parts and auditions.

9 When she went back -- when she was told in  
10 November 2017 that she had been blacklisted, she went back and  
11 realized that she had an 86 percent drop in auditions. She  
12 could not have known.

13 THE COURT: She knew the next year.

14 MS. FEGAN: Your Honor, she didn't. This is over  
15 time. That's why we pled -- we specifically pled that over  
16 time.

17 THE COURT: Because normally she had auditions, and  
18 then auditions stopped.

19 MS. FEGAN: The auditions didn't completely stop. She  
20 did get some auditions. She didn't know why they stopped.  
21 Your Honor, what they are suggesting is that every time a woman  
22 doesn't get a part in the industry, they would have to file a  
23 lawsuit. They wouldn't even be able to allege on information  
24 and belief that it was because they had been blacklisted.

25 In fact, your Honor, the Second Circuit said in Cohen

1 v. S.A.C. Trading Corp., 711 F.3d 353: "Mere suspicions and  
2 distrust do not trigger a duty to investigate under RICO.  
3 In fact, it does not follow that reasonable diligence would in  
4 all circumstances result in discovery of the underlying facts.  
5 Distrust is not enough."

6 Did these women distrust Mr. Weinstein based on the  
7 fact that he assaulted them; that he had enticed them to his  
8 rooms or his office and assaulted them? Of course they did.  
9 Does that mean for 20 years every time they don't get a part  
10 they have to file a lawsuit?

11 THE COURT: Does that mean that it's only in the 20th  
12 year that they discovered this?

13 MS. FEGAN: They had no idea that he had hired spies;  
14 that he had gone to producers and told them off the record,  
15 after these women got parts, to withdraw the part. They did  
16 not know that he had gone to casting directors and said, don't  
17 cast them.

18 In fact, there are legitimate parts that they probably  
19 didn't get, but what we have alleged here, your Honor, is not  
20 that --

21 THE COURT: The question is whether there was a  
22 pattern of deprivation of opportunity following her rejection  
23 of Weinstein. You have to wait for the conclusion of the  
24 period to have a cause of action.

25 MS. FEGAN: You have to know that the deprivation of

1 that part was due to, at least on information and belief,  
2 Mr. Weinstein. If you look at actually the Cohen case --

3 THE COURT: But there's no other known cause.

4 MS. FEGAN: Well, that's not correct, your Honor.  
5 There certainly could be parts that they didn't get because  
6 they weren't right for the part. We acknowledge that.

7 THE COURT: You're talking about auditions. They  
8 didn't even get auditions.

9 MS. FEGAN: For one particular person, that's true.  
10 We also allege that for other people, they were promised  
11 particular parts. They were told they had particular parts,  
12 and then those offers were withdrawn. And we now allege --

13 THE COURT: Last word, Ms. Davis.

14 MS. DAVIS: Your Honor, I think what you were pointing  
15 out is exactly the problem here. You don't need to know the  
16 full extent of a harm or the full extent of any alleged RICO  
17 scheme in order to start the limitations period running. That  
18 simply is not what is required under the law here.

19 All you need is inquiry notice or knowledge, storm  
20 warnings, that put you on notice that your alleged RICO injury  
21 was caused because of this RICO violation. And all of the  
22 alleged RICO injuries, if you do look at paragraph 830 of the  
23 complaint, are clearly laid out.

24 They all refer back to the specific paragraphs where  
25 each plaintiff, each of which makes clear, that there was

notice, actual knowledge, or inquiry notice that all of these purported RICO injuries were caused by the plaintiffs' unwillingness to engage with Mr. Weinstein.

I just want to make one more allegation clear to the Court. If you look at paragraph 9 in the complaint, the complaint alleges that: "At all times, plaintiffs and the class operated under duress and the credible and objective threat of being threatened, deceived, or blacklisted by Mr. Weinstein." All of the class, all of the plaintiffs at all times operated under the belief that they would be blacklisted.

THE COURT: Thanks very much, Ms. Davis.

MS. DAVIS: Thank you, your Honor.

THE COURT: Aren't you glad you moved up to the jury box?

MS. DAVIS: I am, your Honor.

MS. FEGAN: Your Honor, may I make one point just very quickly?

THE COURT: Yes, you may.

MS. FEGAN: With respect to Ms. Thompson, I just want to be clear that we allege that her RICO injury with respect to the interference by Mr. Weinstein --

THE COURT: Say that again, please.

MS. FEGAN: Sure.

Ms. Thompson was contacted by Mr. Weinstein's criminal lawyers in October 2017, and they solicited her information.

1 So I just want to be clear with respect to her --

2 THE COURT: What's the harm there? She's a witness  
3 presumably.

4 MS. FEGAN: No. They contended that they would  
5 represent her. They entered into an attorney-client privilege  
6 relationship. Under that guise, they solicited information  
7 from her. They told her not to worry about her statute of  
8 limitations.

9 So that kind of information isn't in here. The only  
10 reason I bring it up is to make very clear that that is clearly  
11 within the statute of limitations.

12 THE COURT: I don't think that's a harm. One minute,  
13 please.

14 (Pause)

15 THE COURT: Okay, folks. Thank you for your  
16 arguments. There are a lot of issues under state law, but I  
17 think they were well briefed, and they were covered also by  
18 Judge Engelmayer. So I don't think I need any further  
19 arguments on that.

20 Thank you all for coming down and presenting your  
21 arguments in such a cogent fashion.

22 MS. FEGAN: Thank you, your Honor.

23 (Adjourned)  
24  
25